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ABSTRACT

This report summarizes the number of due process special education hearings requested and held in all states and the District of Columbia from 1996 through 1998 and compares those data to similar statistics collected for the years 1991 through 1995. The paper explains relevant laws and regulations, such as the Individuals with Disabilities Education Act, compares one-tier and two-tier systems of enacting due process procedures, and considers differences in how states report time periods. Analysis suggests a trend away from formal hearings toward settlement of disputes through other measures and improvements in quality of data as states computerize their data collection efforts and make data available on the World Wide Web. Five tables provide data on individual states for: (1) state structures, (2) state record keeping years, (3) number of hearings requested at level 1, (4) number of hearings held at level 1, and (5) number of hearings held at level 2 for two-tiered states. (DB)

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Due Process Hearings
1999 Update

Quick Turn Around (QTA) Forum

December 1999

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Quick Turn Around

Project FORUM

QTA - a brief analysis of a critical issue in special education

Issue: Due Process Hearings: 1999 Update **Date: December 1999**

Purpose and Method

During the summer of 1999, Project FORUM, under its cooperative agreement with the U. S. Department of Education, Office of Special Education Programs (OSEP), surveyed states about due process hearings for the period 1996-98. The purpose of the survey was to examine annual trends in due process hearings.

Although there is no specific federal reporting requirement for state hearings, the provision of due process rights is a component of the federal special education statute, Individuals with Disabilities Education Act (IDEA), and states have also maintained records for their own use. With only a few exceptions, states were able to provide the data requested by Project FORUM.

This report summarizes the number of hearings requested and held in all states and the District of Columbia from 1996 to 1998, and compares those data to similar statistics collected for the years 1991 through 1995 that were presented in two prior FORUM documents.[1]

The survey data collected in 1999 included the number of due process hearings requested and the number actually held for the years 1996, 1997 and 1998. Respondents from two-tier states (see explanation below) were also asked to report those data for level two—those hearings appealed to the state from a local level. In addition, questions similar to those on the two previous surveys (spring 1994 and summer 1996) were asked in 1999 to provide a comparison and analysis of trends over the eight year period. The tables at the end of this report summarize the data used for this analysis.

Laws and Regulations

Requirements for designing and conducting due process hearings in special education are prescribed at both federal and state levels. Federal law requirements are specified in the IDEA [20 U.S.C. Chapter 33], and the IDEA Regulations [34 *CFR* 300]. Specific due process provisions of the IDEA Regulations are in Subpart E-Procedural Safeguards, specifically in §300.507-514, and §300.528. Regulations implementing Section 504 of the Rehabilitation Act of 1973 also provide federal due process protections for persons with disabilities. In addition, each state has passed laws, adopted regulations and, in many cases, developed guidelines and policies relating to due process procedures for students with disabilities.

Tiers

Due process procedures are enacted in a similar manner across the country. A major difference among states is in the use of a single or dual level structure. States use either:

- a *one-tier system* in which the hearing is initiated at the state level with no formal hearing procedure at lower levels, or,
- a *two-tier system* in which a hearing takes place first at the school or district level, with the right of appeal to a state-level hearing officer or panel.

[1] Both previous documents, *Due Process Hearings: An Update* (1997) and *Mediation and Due Process Procedures in Special Education: An Analysis of State Policies* (1994), are available from NASDSE.

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EC 307553

Some two-tier states do not collect data from the local level for tier one hearings requested or held, so the level one data for those states is not available. Other data gaps also exist for states that have changed from one type of system to the other.

There are also some minor differences in the implementation of these systems. For example, in Arizona the first tier hearing is at the district level, but the second tier is a review process by the State Office of Administrative Hearings that issues a decision to affirm, modify or overturn the original decision. In Colorado, which also considers itself a two-tier state, the first tier refers to the State Department of Education hearing, and the second tier involves the State Administrative Law Judge Division.

Those supporting the use of a two-tier system believe that it is more effective to work toward dispute settlement at a level closest to the differing parties. Also, a more informal approach is possible at a lower level lessening the involvement of state personnel who may be perceived as "outsiders" to the dispute. However, the trend in recent years has been to move from a two-tier to a one-tier system, mainly because of the delay in settlement caused by the repetition necessitated by multiple levels. Since 1991, five states—Georgia, Illinois, Maryland, Missouri, and Wisconsin— have changed from a two- to a one-tier system, while no conversions have been made in the other direction. Table #1 displays the states that currently use each of the two systems.

Table #1: State Structures

Type	*States/Jurisdictions*
One-Tier N = 32	AL, AZ, AR, CA, CT, DE, DC, FL, GA, HI, ID, IL, IA, ME, MD, MA, MS, MO, MT, NE, NH, NJ, ND, OR, SD, TN, TX, VT, WA, WV, WI, WY
Two-Tier N = 19	AK, CO, IN, KS, KY, LA, MI, MN, NV, NM, NY, NC, OH, OK, PA, RI, SC, UT, VA

Time Periods

Since states vary in the way they report "years," the monthly spans covered in the years discussed in this report are not necessarily the same. For example, some states maintain their data on a calendar year basis, while others use different divisions such as fiscal years or school years. In addition, some states use different time periods for different types of data (e.g., New York records hearings at its first tier on a federal fiscal year basis, but uses a calendar year for second tier data). It would have been an unnecessary burden for states to convert their data into a prescribed time frame since the purpose of this analysis could be served by comparison of annual incidence, even though the specified "year" does not cover exactly the same span of months.

The responses provided by states for the period corresponding to the years 1996, 1997 and 1998 are summarized in Table #2.

Table #2: State Record Keeping Years

Year	*States/Jurisdictions*
Calendar Year (1/1 -12/31) N = 19	AL, CO, CT, FL, IN, KS, ME, MT, NE, NH, ND, OR, RI, TN, UT, VT, WA, WI, WY
Traditional Fiscal Year (7/1-6/30) N = 29	AK, AR, AZ, CA, DE, DC, GA, HI, ID, IL, IA, KY, LA, MD, MA, MI, MN, MS, MO, NV, NJ, NM, NC, OK, PA, SC, TX, VA, WV
Federal Fiscal Year (10/1-9/30) N = 1	NY
Other: a) 8/1-7/31 (N = 1) b) 9/1- 8/31 (N = 1)	a) OH b) SD

Findings

Tables #3, #4, and #5 at the end of this document contain all data that were available for analysis. Data were analyzed to examine changes from 1991 through 1998, as well as for the most recent three-year period. Percentages were used for comparisons only in carefully selected instances because very small changes in a state with low numbers may produce large percentages that are misleading.

Hearing Requests at Level One

The total number of hearings requested for all states and DC at the first tier level increased each year from the 1991 total of 4,079 to the 1998 total of 9,827. The percentage increase each year

was varied with the lowest rise of 3.3% occurring in 1995, and the highest increase of 37% in 1996. The increase in 1998 was only 6.2%. As can be seen in Table #3, change patterns for specific states were also inconsistent—in some states, requests increased every year, some decreased every year, and others have a mixed record.

For the most recent three-year period, 26 states had an increase in requests while 18 show a decrease. Two states remained the same over that period while five could not provide those data.

Hearings Held at Level One

The total number of hearings actually conducted over the past eight years did not climb steadily as did the number of requests received. Although the total for 1998 was 3,315 and the 1991 total was 1,574, the year-by-year totals reflect an increase from the prior year for only four of the years and a decrease for three years.

Most significantly, the totals for hearings actually convened for the most recent period have declined each year: by 4.3% from 1996-97, and by 2.5% from 1997-98.

These data can be viewed from another perspective—the three-year change in the difference between the number of requests and the number of hearings held. For this period, analysis revealed a growing number of hearing requests that are settled by means other than a formal hearing as indicated in the following statistics:

Year	Total Requests	Total Hearings	No Hearing	Percent Not Heard
1996	7,532	3,555	3,977	52.8%
1997	9,246	3,402	5,844	63.2%
1998	9,827	3,315	6,512	66.2%

Two Tier States

Trends in hearings held for the 20 states with two tier hearings systems can be seen in Table #5. The totals fluctuate erratically, and no clear pattern is revealed. However, these data must be interpreted with the following limitations in mind. For some of these states, data for requests and hearings held at level one are included in Tables #1 and #2. But, as noted before, some two tier states do not collect data from the districts on tier one activity. Also, five states have changed from a two tier to a one tier system during the time covered by these statistics, so their data cover only a portion of the time period. In addition, the data were unavailable in some cases because they are maintained by a separate division within state government.

Concluding Comments

It is expected that data concerning due process procedures will become more readily available as state systems become more computerized. Also, some states already make use of the internet to make such data more directly available to the public. For example, Alabama has posted complete data concerning due process hearings from the year 1978 to the present on its state website, including an indication of the party that prevailed in each hearing and the average cost per request.

The data on due process hearings from 1991 to 1998 does not lend itself to simple generalizations, although recent data seem to indicate a trend away from formal hearings. There are many complex factors that influence the holding of hearings or the cancellation of such requests.

The 1997 amendments to Individuals with Disabilities Education Act (IDEA) require that every state establish procedures that will allow for the settlement of a dispute through mediation at state cost, although many states had already developed mediation systems. It is expected that the next few years will see an increase in the trend toward settlement of disputes through means other than formal due process hearings.

Closer tracking of data concerning parental complaints, hearings and alternative dispute resolution methods used in states in the future would provide a clearer picture of actual trends and the factors that contribute to less litigious and time consuming settlement options.

Table #3: NUMBER OF HEARINGS *REQUESTED* AT LEVEL ONE*

STATE	1991	1992	1993	1994	1995	1996	1997	1998
AL	27	44	53	59	81	85	89	60
AK	4	2	0	-	-	-	-	-
AZ	-	-	-	17	24	36	-	47
AR	-	15	39	36	14	53	38	35
CA	611	772	849	1,004	1,170	1,555	1,700	1,816
CO	16	27	26	36	24	29	37	28
CT	227	195	278	358	382	306	328	358
DE	7	10	5	7	10	8	12	13
DC	576	588	624	-	-	1,160	1,730	1,984
FL	37	43	31	74	89	106	105	117
GA	28	48	57	60	69	76	90	88
HI	22	23	25	37	16	32	56	71
ID	8	2	6	8	6	6	8	18
IL	466	507	393	659	477	480	483	398
IN	82	59	62	68	70	68	67	71
IA	32	25	28	31	30	23	12	17
KS	-	-	31	61	53	158	106	101
KY	33	34	50	54	39	40	47	42
LA	6	7	20	34	32	41	57	42
ME	53	35	64	64	48	67	98	52
MD	26	40	50	52	29	-	701	538
MA	379	343	458	580	581	632	558	603
MI	42	34	33	77	74	77	106	110
MN	4	19	16	29	33	43	48	44
MS	2	4	23	23	24	26	28	25
MO	-	-	-	-	-	61	87	74
MT	6	4	10	9	8	12	15	5
NE	14	9	3	6	12	7	9	14
NV	14	31	28	52	48	46	63	72
NH	77	80	74	75	90	78	61	73
NJ	643	555	740	693	721	719	858	938
NM	2	5	9	11	13	23	13	18
NY	465	500	609	-	-	-	-	-
NC	14	24	14	35	29	48	74	41
ND	2	4	3	3	7	4	2	5
OH	47	49	51	54	61	-	-	179
OK	99	83	19	20	36	29	34	40
OR	26	43	56	56	54	37	44	51
PA	264	256	213	286	332	454	549	722
RI	32	20	25	28	43	50	40	50
SC	1	5	3	2	2	-	-	-
SD	16	19	6	9	13	12	6	12
TN	40	58	56	76	77	93	73	69
TX	131	134	118	173	223	413	460	393
UT	7	8	5	3	5	1	2	2
VT	12	25	22	33	42	21	52	44
VA	-	63	66	102	120	96	84	104
WA	-	-	-	72	92	105	115	149
WV	29	34	28	45	36	38	42	28
WI	24	23	25	44	52	75	49	64
WY	2	3	1	6	6	3	10	2
Total	4,079	4,323	4,781	5,321	5,497	7,532	9,246	9,827

*For two tier states, these data represent the number of requests at the first tier. For some two tier states, such data are not available because they exist only at the local level and are not collected by the state.

Table #4: NUMBER OF HEARINGS *HELD* AT LEVEL ONE*

STATE	1991	1992	1993	1994	1995	1996	1997	1998
AL	10	10	19	10	11	17	24	8
AK	4	2	0	1	2	-	-	-
AZ	7	5	7	3	6	5	5	10
AR	6	2	13	13	5	14	8	6
CA	74	72	58	50	77	88	145	114
CO	4	3	2	5	4	7	7	2
CT	51	56	77	96	114	25	32	34
DE	2	4	3	2	5	1	2	4
DC	342	334	363	-	-	760	447	498
FL	12	12	17	19	17	26	25	29
GA	10	9	24	23	15	11	17	15
HI	6	7	6	3	4	8	10	8
ID	1	1	2	2	1	1	2	8
IL	130	133	105	125	87	120	58	55
IN	32	19	17	33	22	18	16	19
IA	6	5	5	5	6	4	2	2
KS	8	4	11	10	9	46	45	22
KY	7	8	9	13	17	12	14	10
LA	3	3	7	9	7	11	11	12
ME	22	10	23	19	8	12	33	10
MD	16	19	46	-	-	-	125	127
MA	95	111	89	40	32	36	50	36
MI	14	14	19	22	7	19	16	18
MN	4	0	3	11	7	17	16	9
MS	2	4	10	8	5	5	10	6
MO	5	5	7	6	10	4	23	12
MT	1	2	3	2	2	3	3	1
NE	7	3	1	2	2	4	2	4
NV	2	6	5	2	3	5	9	15
NH	20	16	15	14	11	14	10	7
NJ	-	-	176	266	275	256	306	344
NM	0	0	1	2	2	3	4	2
NY	465	500	609	793	1,136	1,600	1,401	1,344
NC	2	3	2	9	4	20	43	13
ND	0	2	0	2	5	3	0	2
OH	12	12	10	9	11	11	36	17
OK	33	16	5	7	19	8	7	12
OR	5	5	7	9	5	4	5	8
PA	112	106	78	82	112	147	201	251
RI	6	2	4	28	43	50	40	50
SC	1	5	3	2	2	-	-	-
SD	3	6	1	6	8	1	4	3
TN	-	19	12	22	14	39	30	26
TX	-	-	-	35	33	51	80	67
UT	1	1	0	1	1	1	1	2
VT	1	9	7	5	4	0	8	12
VA	-	25	39	33	45	26	27	23
WA	19	64	72	47	25	19	16	23
WV	4	5	8	11	12	13	12	3
WI	5	8	9	2	8	9	11	11
WY	2	3	1	2	3	1	3	1
Total	1,574	1,670	2,010	1,921	2,263	3,555	3,402	3,315

*For two tier states, these data represent the number of requests at the first tier. For some two tier states, such data are not available because they exist only at the local level and are not collected by the state. See Table #5 for second level data on hearings held at the state level for two-tier states.

Table #5: NUMBER OF HEARINGS HELD AT LEVEL TWO *FOR TWO-TIERED STATES*

STATE	1991	1992	1993	1994	1995	1996	1997	1998
AK	2	2	-	1	2	1	0	0
AZ	0	8	3	2	2	4	5	9
CO	1	1	2	-	-	1	1	2
GA[a]	6	9	4	8	-	-	-	-
IL[b]	60	54	49	38	31	35	-	-
IN	14	8	12	15	10	7	9	7
KS	2	2	3	6	3	4	6	4
KY	3	5	4	8	10	5	13	6
LA	3	3	3	7	1	7	4	9
MD[c]	-	-	-	52	29	-	-	-
MI	11	9	13	11	5	7	8	7
MN	0	0	2	10	7	12	13	9
MO[d]	2	4	5	2	8	-	-	-
NV	0	1	0	1	2	0	0	0
NM	0	0	1	1	2	0	0	1
NY	64	45	44	43	78	78	91	95
NC	2	2	1	1	3	7	3	4
OH	5	5	5	4	6	9	12	18
OK	7	6	4	3	1	4	1	1
PA	41	21	26	28	53	47	79	94
RI	3	4	4	4	9	4	3	0
SC	1	5	3	2	2	5	6	7
UT	0	1	0	0	1	1	1	2
VA	13	19	15	18	32	19	23	13
WI[e]	2	5	4	3	4	2	-	-
Totals	242	219	207	268	301	259	278	288

Notes:

[a] GA changed to a one-tier system on 2/14/94.
[b] IL changed to a one-tier system on 7/1/97.
[c] MD changed to a one-tier system on 7/1/96.
[d] MO changed to a one-tier system on 8/28/96.
[e] WI changed to a one-tier system on 6/26/96.

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